

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeene G. Kelly.

BP Pipelines (Alaska) Inc.	)	Docket No. IS04-98-000
ExxonMobil Pipeline Company	)	Docket No. IS04-74-000
Williams Alaska Pipeline Company	)	Docket No. IS04-86-000

ORDER ACCEPTING AND SUSPENDING TARIFFS, SUBJECT TO REFUND,  
AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued December 31, 2003)

1. On December 1, 2003, BP Pipelines (Alaska) Inc., ExxonMobil Pipeline Company, and Williams Alaska Pipeline Company (The TAPS Carriers) filed tariffs<sup>1</sup> (the 2004 TAPS Tariffs), with proposed effective dates of January 1, 2004. These filings are the annual filings required by the Commission-approved settlement (the Settlement) in Trans Alaska Pipeline System.<sup>2</sup> That settlement prescribed the TAPS Settlement Methodology (TSM) for computing the rates for the transportation of petroleum by pipeline through the Trans Alaska Pipeline System (TAPS). All of the subject filings, except one, propose to decrease their rates. Only Williams Alaska Pipeline Company, L.L.C. (Williams Alaska) proposes to increase its rates. The State of Alaska (Alaska) filed a lengthy protest.

2. As detailed below, we accept and suspend the 2004 TAPS tariffs for one day and permit them to take effect January 1, 2004, subject to refund, and set this matter for hearing. This order benefits customers by ensuring that the rates for transporting petroleum on TAPS are consistent with the Settlement.

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<sup>1</sup> The TAPS tariffs filed are: BP Pipelines (Alaska) Inc. (BP Pipelines) FERC Tariff No. 29; ExxonMobil Pipeline Company (ExxonMobil) FERC Tariff No. 191; and, Williams Alaska Pipeline Company, L.L.C. FERC No. 10.

<sup>2</sup> 33 FERC & 61,064 (1985) and 35 FERC & 61,425 (1986).

### **Background**

3. The Settlement established the TSM and required the TAPS Carriers to calculate their interstate rates in accordance with TSM. Under TSM, each TAPS Carrier calculates a single Total Revenue Requirement, which reflects the TAPS Carriers' total cost of providing service, for both interstate and intrastate deliveries. Once a TAPS Carrier calculates its Total Revenue Requirement, TSM requires the TAPS Carrier to determine the portion of the Total Revenue Requirement that the pipeline uses to calculate rates for interstate transportation.

4. In November 2002, the Regulatory Commission of Alaska (RCA) issued its Order No. 151,<sup>3</sup> which held that the TAPS Carriers' intrastate rates for past years calculated using TSM "do not satisfy the AS 42.06 requirement that pipeline rates be just and reasonable,"<sup>4</sup> ordered refunds for past years, and directed the TAPS Carriers to set lower intrastate rates using a new methodology prescribed by the RCA. The TAPS Carriers and the State of Alaska appealed Order No. 151, which appeal is pending in the Alaska Superior Court, Third Judicial District, Anchorage, Case No. 3AN-02-13511 CI, and payment of the refund has been stayed.

### **Alaska's Protest**

5. Alaska claims that the TAPS Carriers calculated the 2004 Tariffs in a manner that violates the TAPS Settlement. Specifically, Alaska contends that the TAPS Carriers are attempting to collect more than their Total Revenue Requirement by inappropriately including in their interstate tariff, rates that recover the revenue shortfall of \$14.4 million uncollected by the 2003 intrastate rates.

6. Alaska asserts that in 2003, the TAPS Carriers did not collect intrastate revenues that reflected their 2003 filed intrastate tariff rates. Alaska explains that the reason for the lower intrastate revenues was that beginning July 1, 2003, the TAPS Carriers began collecting temporary, RCA Order No. 151 lower intrastate tariff rates.<sup>5</sup> As a result, all intrastate tariff rates were less than the maximum rates allowed by the Settlement. Alaska states that the full-length intrastate tariff rates to Valdez were below the full length

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<sup>3</sup> RCA Order No. P-97-4(151) (Nov. 27, 2002).

<sup>4</sup> Id. at 2.

<sup>5</sup> RCA Order No. P-03-4(10) (Apr. 18, 2003), RCA Order No. P-0-4(14) (May 23, 2003).

interstate tariff rates to Valdez, which remained at the TSM maximum rates. Alaska states that this is termed a Voluntary Revenue Reduction.

7. Alaska states that the Voluntary Revenue Reduction for the previous year is the additional revenue the TAPS Carrier would have derived had its tariffs not been below the maximum interstate tariffs then in effect. Alaska states that under the Settlement, a TAPS Carrier cannot recover in the interstate rates any revenue termed a Voluntary Revenue Reduction.

8. Alaska asserts that the TAPS Carriers, when calculating their TAPS 2004 tariffs, included the Voluntary Revenue Reduction amount, which for the six month period July 1, 2003 to December 31, 2003, for all TAPS Carriers, it estimates to be approximately \$14.4 million. The estimated amounts for all the TAPS Carriers, including those whose tariffs not at issue here, are as follows: BP Pipelines \$4.0 million; ExxonMobil \$2.3 million; Phillips Transportation \$1.2 million; Unocal \$1.6 million; and Williams Alaska \$5.4 million.

9. Alaska argues that if the TAPS Carriers continue to inappropriately calculate the 2005 interstate tariff calculations, the impact in 2005 will greatly exceed the impact in 2004.

10. Alaska requests that the Commission suspend the proposed 2004 TAPS tariffs for one day, institute an investigation and make the tariffs effective subject to refund.

### **TAPS Carriers' Response**

11. On December 16, 2003, the TAPS Carriers filed an Answer to Alaska's protest. They argue that denying them the right to recover the total revenue requirement is inconsistent with the Settlement, because they did not "voluntarily" agree to lower their rates. The TAPS Carriers state that they currently charge lower intrastate rates only because the RCA ordered them to do so using a new methodology. The TAPS Carriers argue that no basis exists for finding that the TAPS Carriers voluntarily agreed to forgo revenue they would have otherwise collected by charging their maximum intrastate rates.

12. The TAPS Carriers request that the Commission reject Alaska's interpretation of the Settlement, deny Alaska's Protest, and accept the TAPS Carriers' 2004 Tariffs without any conditions.

### **Discussion**

13. The issues of this case pertain to application of the TSM to the TAPS 2004 Tariffs. The parties have different understandings of how the terms of the Settlement apply when there is an order from the RCA that may be inconsistent with the Settlement. At present, however, there is insufficient information to enable the Commission to resolve the dispute. It is therefore appropriate to establish hearing procedures to examine the issues raised in the protest.

14. The Commission has, however, consistently encouraged parties to resolve disputes of this nature through settlement, and believes that formal settlement procedures may lead to a resolution of this case. The issues in this case involving the TAPS 2004 Tariffs are complex and numerous and should be resolved by settlement. Therefore, we shall hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter. To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>6</sup> If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.<sup>7</sup> If a settlement cannot be reached, the instant docket will be set for hearing.

### **Suspension**

15. Based upon a review of the filing, the Commission finds that the TAPS 2004 Tariffs have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept and suspend the tariff, to become effective January 1, 2004, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

#### The Commission orders:

(A) BP Pipelines (Alaska) Inc. FERC Tariff No. 29; Exxon Moil Pipeline Company FERC Tariff No. 191; and, Williams Alaska Pipeline Company, L.L.C. FERC

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<sup>6</sup> 18 C.F.R. ' 385.603 (2002).

<sup>7</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at [www.ferc.gov/legal/oalj/bio/judges.htm](http://www.ferc.gov/legal/oalj/bio/judges.htm).

No. 10. are accepted for filing and suspended, to become effective January 1, 2004, subject to refund and further order of the Commission.

(B) Pursuant to the authority of the Interstate Commerce Act, particularly Section 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised by the TAPS Carriers' filing.

(C) Pursuant to the Section 375.304 of the Commission's regulations, 18 C.F.R. ' 375.304 (2002), the Chief Administrative Law Judge shall designate a presiding administrative law judge for the purpose of conducting a hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and to the Commission's Rules of Practice and Procedure. An initial decision, as specified in 18 C.F.R. ' 385.708 (2002), shall be issued on or before October 15, 2003.

(D) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.603 (2002), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date of this order. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(F) Within 30 days of the date of this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.